IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1336 OF 2006

Mr.Rana Dileep Bhimsingh,)
Age:23 years, Indian Inhabitant,)
Presently residing at Room No.18,)
Under Graduate Students Hostel,)
Sion Hospital, Mumbai-400 022.) ..PETITIONER

Versus

1. The Dean,
Lokmanya Tilak Medical College,)
Sion Hospital Compound,)
Sion, Mumbai-400 022.)

2. Maharashtra University of)
Health Sciences (through)
its Deputy Registrar),)
having its office at St.)
Gorge Hospital Compound,)
Mumbai-400 001.) ..RESPONDENTS

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Mr.V.M.Thorat, Advocate for the Petitioner.
Ms.Trupti Puranik, Advocate for Respondent No.1.
Mr.R.V.Govilkar, Advocate for Respondent No.2.

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CORAM : **F.I.REBELLO AND**
SMT.V.K.TAHILRAMANI,JJ.
DATED : **JULY 26, 2006.**

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.)

1. Heard Mr.Thorat learned Advocate for the petitioner, Ms.Puranik learned Advocate for Respondent No.1 and Mr.Govilkar learned Advocate for Respondent No.2. Through this Petition filed under Article 226 of the Constitution of India,

the petitioner seeks to challenge the order dated 29.3.2006 passed by the Controller of Examination of Respondent No.2 University.

2. The petitioner is a student of M.B.B.S. degree course at the Respondent No.1 College and he had appeared for 3rd M.B.B.S. examination in December, 2005. The result of the examination were declared on the website on 20.2.2006 and the petitioner's result was shown to have been withheld. However, prior to this stage, the petitioner was served with a show cause notice dated 3.1.2006 by the Respondent No.2 University, requesting him to show cause as to why punishment stipulated in Rule 66.11 & Rule 65.12 of the Ordinance 1/2002 (Amended) should not be imposed on him. He was further informed to appear before the Unfair Means Enquiry Committee on 12.1.2006 at 10:30 a.m. and accordingly the petitioner appeared before the Enquiry Committee and submitted his reply. He admitted before the Enquiry Committee that while he was writing the answer papers, he was in possession of a cellphone and also admitted to have sent SMS to his friends asking some answers to the questions that were set

out in the question paper for the subject of Pediatrics. The students who received the SMS from the petitioner were also asked to appear before the Unfair Means Enquiry Committee and those three students including the petitioner confessed about sending and receiving SMS through separate cellphones. Under these circumstances, a substantial plea, in this Petition against the impugned order of punishment, is that it is disproportionate. As per the petitioner the punishment inflicted on him as per Rule 65.11 and Rule 65.12 is unwarranted, incorrect and illegal.

3. We have gone through the Rules 65.11 and 65.12 of the Ordinance 1/2002, governing the conduct of examinations and we have also perused the affidavit in reply filed by the Administrative Officer of Respondent No.1 and Deputy Registrar of Respondent No.2. As per the Rules 65.11, the following punishment can be imposed :

> "**65.11 Punishment** :
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> The Competent Authority concerned i.e. the Board of Examinations in the cases of University examination, the concerned Dean/Principal in the cases of College examination, and the Head in the cases of examination held by the Recognised Institution, after taking into

consideration the report of the Committee shall pass such orders as it deems fit including granting the student benefit of doubt, issuing warning or exonerating him/her from the charges and shall impose any one or more of the following punishments on the student/s found guilty of using unfair means:

65.11.1 Annulment of performance of the examinee in full or in part in the examination he/she has appeared for.

65.11.2 Debarring examinee from appearing for any examination of the University or College or Institution for a stipulated period not exceeding five years.

65.11.3 Debarring examinee from taking admission for any course in the University or College or Institution for a stipulated period not exceeding five years.

65.11.4 Cancellation of the University or College or Institution Scholarship/s or award/s or prize or medal etc. awarded to him/her in that examination.

65.11.5 In addition to the above mentioned punishment, the competent authority may impose a fine on the examinee declared guilty. If the examinee concerned fails to pay the fine within a stipulated period, the competent authority may impose on such a examinee additional punishment/penalty as it may deem fit.

65.11.6 As far as possible the quantum of punishment should be as prescribed (category-wise) below.

65.11.7 The examinee concerned be informed of the punishment finally imposed on him/her in writing by the competent authority or by the Officer authorised by it in this behalf, under intimation to the College/Institution he/she belongs to and to the Centre Incharge."

. Whereas Rule 65.12 is the broad of categories of Unfair Means resorted to by the examinee. The Respondent No.2 University in its affidavit in reply has clarified that unfair means indulged in by the petitioner while answering the paper in Pediatrics did not fall in the category from Sr.No.1 to 14 of the Rule 65.12 and that his act falls in the last category No.15 which reads as under :

Sr. No.	Nature of Malpractice	Quantum of punishment
65.12.15	All other malpractices not covered in the aforesaid categories.	Annulment of the performance of the student at the University or College or Institution Examination in full, and severe punishment depending upon the gravity of the offence.

4. The punishment for malpractices covered by Rule 65.12.15 prescribes annulment of the performance of the student at the University examination in full and severe punishment depending upon the gravity of the offence. However, Rule 65.11.2 authorises the University to debar the examinee from appearing for any examination of the University for a stipulated

period not exceeding five years; and Rule 65.11.1 provides for annulment of performance of the examinee in full or in part in the examination he/she has appeared for. Thus, Rule 65.11 provides for the power of the University to impose any one or more of the punishments stipulated in the said Rule. The petitioner contends that he could have been excluded only for one additional examination as his case would fall under Rule 65.12.2. Rule 65.12.2 reads as follows :

Sr. No.	Nature of Malpractice	Quantum of punishment
65.12.2	Actual copying from the copying material.	Exclusion of the student from - University or College or Institution - examination for one additional examination.

. On perusal of the said Rule, in our view the contention of the petitioner cannot be accepted because the unfair means indulged in by the petitioner did not amount to only actual copying from the copying material. The ramifications of the unfair means indulged in by the petitioner were not limited to the petitioner

being the sole beneficiary and indeed the possibility of the other two students who replied to the petitioner's queries by way of SMS transmitting the same reply to other examinees, cannot be ruled out.

5. A similar issue came up for consideration before this Court in Writ Petition No.7878/2005 decided on 25th April, 2006. A examinee of the 2nd year M.B.B.S degree course was apprehended by the Supervisor while using a mobile-phone and he was also meted the same punishment. While upholding the order of punishment, this Court noted inter alia as under :

> . "Under Clauses 65.11.1 and 65.11.2 it is open to the University to annul the performance of the examinee for that particular examination and to debar him or her from appearing at any subsequent examination for a period not exceeding five years. The punishments which are provided for in Clause 65.11 can be imposed either singly or in combination. The University, in our view, is justified in taking a serious view of malpractices that are resorted to by students. Malpractices in the course of the examination seriously affect the sanctity of the examinations process. No academic body can be oblivious to the erosion of public confidence in the examination system that would be occasioned by resort to

> unfair means at examinations. Such instances have to be dealt with all the seriousness that is required to root out the evil of examination malpractices."

6. We are satisfied that an enquiry was held into the allegations of malpractices indulged in by the petitioner alongwith his two friends and the enquiry was in keeping with the principles of natural justice. Such enquiries are not governed by the strict rules of evidence. The final decision arrived at by the authorities are supported by the report of the officers who were supervising the examination and the confessions of the petitioner as well as his two friends. The punishment imposed is as per the Rules under Ordinance 1/2002 and therefore we do not find any reason to exercise extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere with the said punishment in any manner. Hence, the Petition is summarily rejected. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]